

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 CIAE-00 PM-04 INR-07 L-03
ACDA-07 NSAE-00 PA-01 SS-15 PRS-01 SP-02 USIA-06
TRSE-00 OES-06 CEQ-01 EPA-01 OMB-01 H-01 /069 W
-----232042Z 061755 /45

P 231641Z MAR 77
FM USMISSION NATO
TO SECSTATE WASHDC PRIORITY 2393
SECDEF WASHDC PRIORITY
INFO AMEMBASSY THE HAGUE
AMEMBASSY LONDON
USCINCEUR
USNMR SHAPE

LIMITED OFFICIAL USE SECTION 1 OF 2 USNATO 1651

E.O. 11652: N/A
TAGS: MARR, NATO, NL
SUBJECT: NETHERLANDS WATER POLLUTION TAXES ON AFCENT

REF: STATE 62703 (DTG 212317Z MAR 77)

1. NATO MILITARY BUDGET COMMITTEE (MBC) HAS
DISCUSSED ISSUE OF NETHERLANDS WATER POLLUTION
TAXES LEVIED ON AFCENT MILITARY HEADQUARTERS ON
SEVERAL OCCASIONS, BUT HAS NOT ADDRESSED QUESTION
OF TAXES IMPOSED ON INDIVIDUALS. MBC HAS NOT REACHED A FINAL
CONCLUSION REGARDING THE TAXES. WE UNDERSTAND THAT AFCENT
HEADQUARTERS HAS MADE A ONE-TIME PAYMENT OF THE TAX ON ITS
FACILITIES UNDER PROTEST, BUT WILL MAKE NO MORE PAYMENTS
PENDING FINAL DECISION.

2. DURING MBC CONSIDERATION OF THIS ISSUE
THE UK REP TOOK THE POSITION THAT THE
NETHERLANDS LEVY IS A TAX AND NOT A CHARGE
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FOR SERVICES RENDERED, AND THAT AS SUCH
ALLIED FORCES SHOULD BE EXEMPTED UNDER
ARTICLE 10 OF THE NATO SOFA. THE CANADIAN
AND FRG REPS TOOK THE POSITION THAT THE
NETHERLANDS HAS NOT YET PROVED ITS CASE THAT THE
CHARGE IS NOT A TAX.

3. THE NATO LEGAL ADVISOR INFORMS US THAT THE
SECRETARY GENERAL EARLIER WROTE TO THE NETHERLANDS'
PERMREP ASKING THAT THE NETHERLANDS GOVERNMENT

STAY THE EXECUTION ON THE IMPOSITION OF THE TAX
UNTIL THE MBC COULD ESTABLISH A POSITION ON THE
ISSUE. WE HAVE JUST RECEIVED PO/77/43 WHICH
CIRCULATED A LETTER FROM THE NETHERLANDS PERMREP
TO THE SYG, DENYING HIS EARLIER REQUEST.
(SEE PARA 5 BELOW).

4. NATO LEGAL ADVISOR BELIEVES SACEUR IS PLANNING
TO REQUEST SYG LUNS TO PLACE THIS TAX ISSUE ON THE
AGENDA OF AN EARLY COUNCIL MEETING. LEGAL ADVISOR
BELIEVES SYG CAN DO THIS, BUT IN HIS OPINION, IT
WOULD BE BETTER IF THE NATIONAL AUTHORITIES CONCERNED
(I.E., BELGIUM, CANADA, FRG, UK AND US) WOULD REQUEST
THAT THE ISSUE BE CONSIDERED BY THE COUNCIL
UNDER ARTICLE 16 OF THE NATO SOFA.

5. BEGIN TEXT OF NETHERLANDS' LETTER:

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LIMITED OFFICIAL USE SECTION 2 OF 2 USNATO 1651

DEAR SECRETARY GENERAL,

THE MATTER RAISED BY THE SECRETARY GENERAL A.I. IN
HIS LETTER NO. SG(76)601, OF 12TH NOVEMBER, 1976, HAS BEEN
THOROUGHLY INVESTIGATED BY THE NETHERLANDS GOVERNMENT. THE
RESULTS OF THE INVESTIGATION ARE SET OUT BELOW.

THE NETHERLANDS GOVERNMENT BELIEVES THAT THERE IS NO
LEGAL BASIS FOR EXEMPTING AFCENT PERSONNEL FROM THE POLLUTION
LEVY.

IN THE SPRING OF 1976, THE HEAS OF THE GERMAN, BELGIAN
AND BRITISH DELEGATIONS TO AFCENT, FOLLOWING THE PROCEDURE LAID
DOWN FOR THIS PURPOSE, LODGED APPEALS WITH THE LIMBURG PROVINCIAL

EXECUTIVE AGAINST THE ASSESSMENTS MADE BY THE WATERSCHAP
ZUIVERINGSCHAP LIMBURG (LIMBURG WATER AND POLLUTION CONTROL BOARD)
1974. ON 6TH DECEMBER, 1976, THE LIMBURG PROVINCIAL EXECUTIVE
DISALLOWED THE APPEALS, BASING ITS DECISION ON THE FOLLOWING
CONSIDERATIONS:
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(1) THAT IN ACCORDANCE WITH THE FIRST PARAGRAPH OF
ARTICLE X OF THE LONDON AGREEMENT OF 19TH JUNE, 1951
(THE NATO STATUS OF FORCES AGREEMENT), FOREIGN AFCE
PERSONNEL ARE EXEMPTED FROM ANY FORM OF TAXATION IN THE
RECEIVING STATE WHOSE INCIDENCE DEPENDS ON RESIDENCE
OR DOMICILE;

(2) THAT THE WET VERONTREINIGING OPPERVLAKTEWATEREN
(POLLUTION OF SURFACE WATERS ACT) AND THE VERORDENING
VERONTREINIGING OPPERVALKTEWATEREN
IN LIMBURG, WHICH IS FOUNDED
ON THE ACT, AND THE HEFFINGSVERORDENING (LEVY ORDER) OF
THE ZUIVERINGSCHAP LIMBURG (LIMBURG POLLUTION CONTROL
BOARD) ARE BASED ON THE INTERNATIONALLY ACCEPTED PRINCIPLE
THAT THE POLLUTER PAYS;

(3) THAT THE LEVY IMPOSED AS PART OF THE APPORTIONMENT OF
THE COST OF POLLUTION CONTROL IS THEREFORE PAYABLE BY
ANYONE WHO, DIRECTLY OR INDIRECTLY, DISCHARGES POLLUTANTS
INTO SURFACE WATERS, THE AMOUNT OF THE LEVY BEING BASED
ON THE AMOUNT AND NATURE OF THE SUBSTANCES DISCHARGED;

(4) THAT THE INCIDENCE OF THE LEVY THEREFORE DEPENDS IN THE
FIRST INSTANCE ON THE FACT OF THE DIRECT OR INDIRECT
DISCHARGE OF POLLUTANTS INTO SURFACE WATERS, AND NOT ON
RESIDENCE OR DOMICILE IN THE NETHERLANDS;

(5) THAT THE LEVY CANNOT THEREFORE BE INCLUDED AMONG THE
TAXES FROM WHICH FOREIGN AFCE PERSONNEL IN THE
NETHERLANDS ARE EXEMPTED UNDER ARTICLE X OF THE NATO
STATUS OF FORCES AGREEMENT;

(6) THAT, MOREOVER, THIS MATTER INVOLVES THE APPLICATION
OR IMPLEMENTATION OF DUTCH LAW, AND THAT THE INTERPRETA-
TION OR APPLICATION OF THE STATUS OF FORCES AGREEMENT
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IS NOT AFFECTED;

(7) THAT IN THIS CASE NO DIFFERENCES, AS REFERRED TO IN
ARTICLE XVI OF THE AGREEMENT, EXIST BETWEEN THE

CONTRACTING PARTIES;

(8) THAT ON THE BASIS OF THESE CONSIDERATIONS FOREIGN AFCENT PERSONNEL IN LIMBURG HAVE BEEN CORRECTLY SUBJECTED TO THE LEVY IMPOSED BY THE WATERSCHAP ZUIVERINGSCHAP LIMBURG (LIMBURG WATER AND POLLUTION CONTROL BOARD) AS PART OF THE APPORTIONMENT OF THE COSTS OF POLLUTION CONTROL IN 1974, IN SO FAR AS THE PERSONNEL CONCERNED DIRECTLY OR INDIRECTLY DISCHARGED POLLUTANTS INTO SURFACE WATERS; AND

(9) THAT SUCH DISCHARGE TOOK PLACE FROM THE ACCOMMODATION RENTED BY THE APPELLANT.

I WOULD BE GRATEFUL IF YOU COULD INFORM SACEUR OF THE ABOVE AND ASK HIM, THROUGH THE INTERMEDIARY OF CINCENT, TO ACQUAINT THE FOREIGN DELEGATIONS TO AFCENT WITH THE NETHERLANDS GOVERNMENT'S VIEW THAT APPEAL TO THE ADMINISTRATIVE COURTS IN THE NETHERLANDS IS THE APPROPRIATE CHANNEL FOR THE SETTLEMENT OF THIS QUESTION.

THE NETHERLANDS GOVERNMENT ALSO BELIEVES THAT ANY FURTHER ACTION ON THIS MATTER SHOULD BE IN CONFORMITY WITH THE PROVISIONS OF THE STATUS OF FORCES AGREEMENT.

IN VIEW OF THE ABOVE, MY GOVERNMENT REGRETS THAT IT CANNOT ACCEDE TO YOUR REQUEST TO PRESS THE LEGAL BODIES CONCERNED NOT TO TAKE ENFORCEMENT MEASURES IN RESPECT OF AFCENT PERSONNEL.

END TEXT.

STRAUSZ-HUPE

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<< END OF DOCUMENT >>

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